IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

COPC No.26 of 2000

Decided on: March 13, 2007

M/s.Raju Food & Anr. **…..Petitioners.**

VERSUS

Smt.Parkash Devi & Ors. **…..Respondents.**

Coram

The Hon'ble Mr.Justice Surjit Singh, Judge.

Whether approved for reporting?[1] No

For the petitioners: **Mr.Raman Sethi, Advocate.**

For respondents: **Mr.Dushyant Dadwal, Advocate.**

Surjit Singh, Judge (Oral).

Heard and gone through the record.

2. This Court, on an application, moved under Order 39 Rules 1 and 2 C.P.C. and Order 41 Rule 5 C.P.C. wherein the prayer was for staying the operation of the order passed by the First Appellate Court, directed the parties to maintain *status-quo* vide order dated 6th April, 2000.

3. The dispute between the parties was with regard to a wall. Suit was filed by the contemnors that they had the right to raise construction using the wall erected by the contempt petitioners on the boundary of their properties, as support for the roof of their structure intended to be raised. The contempt petitioners contested the suit

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

alleging that the wall had been raised by them by spending the entire money from their pocket and unless the contemnors paid 50% of the cost of the wall to them they could not be permitted to use that wall. An application for temporary injunction was also filed by the contemnors seeking a restraint order against the contempt petitioners from interfering with their claimed right to raise the roof of their proposed construction on the aforesaid wall on the common boundary. The trial Court dismissed that application. Appeal was filed against the order of dismissal in the Court of District Judge, who allowing that appeal, issued a temporary injunction restraining the contempt petitioners from interfering with the right of the contemnors to lay slab of their proposed construction on the wall on the common boundary. Against the aforesaid order of the District Judge, a revision was filed in this Court. It was in this revision matter that the aforesaid application was moved and this Court passed the order for maintaining *status-quo* on 6th April, 2000.

4. In the present petition, which is under Section 12 of the Contempt of Courts Act and Order 39 Rule 2(A) C.P.C., it is alleged that inspite of the aforesaid order dated 6th April, 2000 having been brought to the notice of the contemnors on 6th April, 2000 by the contempt petitioner himself, the contemnors laid the lintel resting one side of the wall and this they did some time after 7th and before 10th April when the contempt petitioner was out of station. The contemnors denied that they had carried out any construction when the aforesaid

stay order was operative. They alleged that the roof had been laid before the order was brought to their notice.

5. This Court framed the following issues on 1st June, 2001:-

(1) Whether the respondents wilfully dis-obeyed the order of this Court dated 6th April, 2000, as alleged? OPP

(2) Relief. (Final Order)

6. Both the sides have led oral as well as documentary evidence.

7. I have heard the learned counsel for the parties and gone through the evidence. My findings on the aforesaid issues are as under:-

Issue No.1:

8. The petitioners have examined one A.S.I., named Chaman Lal, as PW-2. The witness has stated that on 7.4.2001 (The date has been wrongly typed. In fact it should have been 7.4.2000), a complaint, copy Ext.PW-2/A, was lodged by petitioner Vinod Jindal alleging that inspsite of interim order for maintenance of *status-quo* passed by the High Court on 6th April, 2000, the contemnors were carrying on the construction on the spot and that to enquire into that complaint he went to the spot and found that shuttering had been put up for laying the lintel and that three of the contemnors, namely, Sri Ram, Anil Kumar and Sunil Kumar were present on the spot and that the contents of the order of the Hon'ble High Court, a copy of which

was made available to him by the aforesaid petitioner, were read out to them and they were directed not to continue with the construction. The witness has stated that he prepared the report to this effect on 7th April, 2000 itself copy whereof is Ext.PW-2/B. The witness has further testified that on 10th April, 2000 petitioner Vinod Jindal lodged another complaint, copy Ext.PW-2/C, alleging that slab had been laid, with one side resting on the wall, in question, and that when he went to the spot to make inquiry it was found that slab had been laid over the shuttering and that he entered a report to this effect in the ***Roznamcha***, copy Ext.PW-2/D. The testimony of the witness is fully corroborated by the two complaints made by the petitioner Vinod Jindal, one on 7th April, 2000 and another on 10th April, 2000 and the reports entered by him in the ***Roznamcha***, copies whereof are Exts.PW-2/B and PW-2/C. There appears to be no reason to disbelieve the testimony of this witness as he has no axe to grind by making a false statement against the contemnors. Petitioner Vinod Jindal, who has appeared as PW-4, also testifies these facts. There is no contradiction or any inconsistency or discrepancy in the testimony of petitioner Vinod Jindal, who has appeared as PW-4 and the above named A.S.I. Chaman Lal PW-2.

9. A specific suggestion was thrown to A.S.I. Chaman Lal in the course of his cross – examination, on behalf of the contemnors, that the construction had been completed and slab laid on 5th April, 2000, i.e. to say before the passing of the order dated 6th April, 2000 by this Court directing the parties to maintain *status-quo.* He denied

this suggestion. Though to the aforesaid witness of the contempt petitioner, a suggestion was made that the slab had been laid before the passing of the order, allegedly disobeyed, one of the contemnors who entered the witness box, namely, RW-3 Sunil Kumar in his own testimony nowhere stated that the slab had been laid or the construction completed on 5th April, 2000 meaning thereby that the plea suggested to PW-2 Chaman Lal, A.S.I., is not correct to the very knowledge of the contemnors. Also there is no evidence in support of the plea raised in the reply that the construction had been completed before the order was brought to the knowledge of the contemnors. The order was passed by this Court on 6th April, 2000. That very day, petitioner Vinod Jindal went to the contemnors, who are having their factory on a plot adjacent to that of the petitioners and apprised them of the order of *status-quo* passed by this Court. On the next following day i.e. 7th April, 2000 A.S.I. Chaman Lal PW-2 also read out the order of this Court to the contemnors Sri Ram, Sunil Kumar and Anil Kumar. There is unflinching evidence, as referred to hereinabove, that on 7th April, 2000 the slab was not there and only shuttering had been arranged. However, the slab was noticed on 10th April, 2000 when petitioner Vinod Jindal returned to the spot after having remained out of station for 2/3 days.

10. In view of the above discussion, it is held that respondents Sri Ram, Sunil Kumar and Anil Kumar have disobeyed order dated 6th April, 2000 passed by this Court directing the parties to maintain *status-quo,* during next four weeks. There is no evidence

against the 4th contemnor, namely, Smt.Parkash Devi. This contemnor in fact, as per evidence on record, is shown to be resident of Trawari in Haryana and she had no knowledge of the passing of the order dated 6th April, 2000 by this Court nor was she a party to its disobedience. Issue is answered accordingly.

Relief (Final Order):

11. In view of the finding on Issue No.1, contemnors Sri Ram, Sunil Kumar and Anil Kumar are held guilty of contempt of Court under Section 12 of the Contempt of Courts Act. They are not guilty of contempt under Rule 2(A) of Order 39 C.P.C. because the order of this Court disobeyed by them was not passed under Rules 1 and 2 of Order 39 C.P.C. but under Order 41 Rule 5 C.P.C. as the prayer in the application was for staying the operation of the order of the District Judge which had been challenged in revision.

12. Now, coming to the question of punishment, it is admitted that the suit , out of which the revision arose and in which the aforesaid interim order dated 6th April, 2000 was passed by this Court, has finally been decreed in favour of the contemnors and the decree has attained finality, meaning thereby that it has been held that the contemnors have the right to lay on one side of the wall the slab of their structure and the petitioners have been held to have the right to recover 50% of the cost of the wall from the contemnors. Looking to the fact that the suit has been decreed in favour of the contemnors, I do not think that this is a fit case where sentence of imprisonment

should be imposed. The contemnors have not tendered apology. Therefore, they are punished to pay fine of Rs.1000/- each.

13. Petition stands disposed of.

(Surjit Singh)
Judge.

March 13, 2007
(soni)